

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4437 of 1983

Date of decision: 29-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LUSINABEN A. SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

Mr. Mukesh Patel for Respondent No. 1

CORAM : MR.JUSTICE M.B.SHAH

Date of decision: 29/08/96

ORAL JUDGEMENT

Challenge is made by the petitioner to the order of the Gujarat Civil Services Tribunal dated 6-10-1982 made in Appeal No.504 of 1981. So far as the substantial part of the order of the Tribunal is concerned, the petitioner has not made any grievance. The petitioner

was dismissed from service after holding departmental inquiry against her. Her dismissal from service has been challenged by the petitioner before the Tribunal. By the impugned order the Tribunal has allowed the appeal partly and the order of dismissal of the petitioner from service was set aside. Directions were given to the respondents to reinstate the petitioner back in service with immediate effect. She has also been given the benefit of her past services. Penalty of dismissal was substituted by penalty of withholding of one increment for a period of six months without any future effect. The petitioner was not given salary for the period from the date of dismissal till the date of reinstatement as she was held responsible for the delay in filing appeal. The Tribunal stated in the order that the petitioner is responsible for the delay which has been condoned by the Tribunal for the purposes of limitation only.

2. The counsel for the petitioner contended that the Tribunal has committed illegality in denying the salary to the petitioner for the period of dismissal. The order of the Tribunal is perverse to this extent as there was no culpable delay in filing the appeal which justifies denial of salary for all this period. Delay in filing the appeal, as per the case of the petitioner, was only of 98 days. This fact is not disputed by the counsel for the respondents. The petitioner was dismissed from service on 31-5-1978, and the decision has been given by the Tribunal in appeal on 16th October, 1982. So the

denial of backwages of the petitioner for such a long time only for delay of 98 days in filing appeal ought to have been condoned by the Tribunal. I find sufficient merit in the contention of the learned counsel for the petitioner that the reason which has been given by the Tribunal is perverse.

3. The counsel for the petitioner contended that under Rule 152 of the Bombay Civil Services Rules the Competent authority has to consider how this period has to be regulated. It is not the case that the petitioner has been fully exonerated of the charges. I have gone through the contents of the aforesaid rules and it appears that the competent authority has to make an order as to how this period has to be regulated. But I do not consider it proper to give any final opinion on this matter as what I feel is that it is a case which has to be remanded back to the Tribunal for passing appropriate order after hearing the parties regarding how the period of dismissal of petitioner is to be regulated.

4. In the result this writ petition is allowed. The order of the Gujarat Civil Services Tribunal made in Appeal No.504 of 1981 dated 6-10-1982, to the extent it denies salary to the petitioner from the date of dismissal till reinstatement, is set aside. The Tribunal is directed to pass order afresh on this question in accordance with law after hearing the parties. Rule made absolute accordingly. No order as to costs.

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CSM